

# LEGAL SERVICES CORPORATION

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## BOARD OF DIRECTORS' SEMIANNUAL REPORT TO THE CONGRESS

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Decisions, Final Actions, and Comments  
on the Office of Inspector General's  
Semiannual Report to the Congress

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April 1, 1997 - September 30, 1997

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November 26, 1997

## **FOREWORD**

I am pleased to transmit the report of the Legal Services Corporation ("LSC" or "Corporation") regarding the Semiannual Report of LSC's Office of Inspector General ("OIG") for the six-month period of April 1, 1997 through September 30, 1997.

The Corporation's Board of Directors ("Board") recognizes the value of the Inspector General function and remains committed to working with the Inspector General to achieve our goal of providing high quality legal assistance to the poor of our nation.

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Douglas S. Eakeley, Chairman  
Legal Services Corporation

November 26, 1997

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## MESSAGE OF THE BOARD OF DIRECTORS

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The beginning of this reporting period marked the passage of one year since the enactment, as part of LSC's fiscal year 1996 appropriation, of major changes in the legal services delivery system and in the programmatic operations of the Corporation. During that period, LSC grantees modified their operations to comply with a variety of new restrictions placed upon their activities. Meanwhile, the Corporation proceeded with its implementation of a competition-based process for awarding grants and a new system for compliance monitoring and enforcement.

The Inspector General's Report indicates that the Corporation and its grantees have risen to the challenge and accomplished the results that Congress sought. The results of the first year's reports under the new system for compliance monitoring demonstrate that grantees have overwhelmingly brought themselves into compliance with the new restrictions. Recipient audits completed during the reporting period for 216 programs resulted in only three findings of noncompliance, each of which has been addressed to correct the deficiency. Moreover, the special compliance audits conducted by the OIG are nearly complete. While these targeted audits have generated more findings, the number and nature of the recommendations are not unusual, particularly in light of the extensive new program requirements. These results confirm that the Corporation is providing effective oversight of its grantees, and that the program is operating as Congress intended.

In addition, as we report more fully below, the system for competition for grants is now fully operational. The processing of competitive grant proposals for calendar year 1998 funding was improved through the effective use of a new electronic filing procedure. The Corporation anticipates that its streamlined grants review and evaluation process will assure timely grant awards later this year.

The Board is extremely gratified by the performance of the Corporation's staff during this period, doing a difficult job with increasingly limited resources, and doing it well, in a responsible and highly professional manner. We are equally grateful to the staffs of LSC grantees, who continued to go about the business of representing people in need with energy and commitment, despite diminished resources and significant changes in the rules under which they must operate.

With this period of transition behind us, the Corporation can turn its attention to the future. During this reporting period we initiated a strategic planning process to guide our activities through fiscal year 2003. The programmatic portion of our proposed Strategic Plan places a major emphasis on expanding the services available to clients and enhancing the

quality of the services that are provided. Through better use of information technology and new methods of delivering services, and through expanded partnerships with the private bar and other service providers, we hope to build upon current strengths, and increase the numbers of clients served by grantees despite diminished resources.

Leading the Corporation in these initiatives will be its new President, John McKay, who replaced Martha Bergmark during May of this year. A Seattle attorney in private practice who has long been active in pro bono work and support for legal services in his native Washington, John McKay embodies the principles of bi-partisanship and public-private partnership which contribute to the unique strength and effectiveness of the legal services delivery system.

## BACKGROUND

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### **The Legal Services Corporation**

The Corporation is a private, non-profit corporation established in the District of Columbia by the Legal Services Corporation Act of 1974, as amended ("the LSC Act"),<sup>1</sup> to provide financial support for legal assistance in non-criminal proceedings to persons unable to afford legal services. Under the LSC Act, the Corporation is governed by an eleven-member bi-partisan Board of Directors appointed by the President of the United States, with the advice and consent of the Senate. The Board appoints the President of the Corporation, who serves as the Corporation's chief executive officer, subject to general policies established by the Board.

The 1988 Amendments to the Inspector General Act of 1978 required LSC to establish an Office of Inspector General ("OIG") and extended specific provisions of the 1978 Act to LSC. Accordingly, such an office was established by and for the Corporation. The Inspector General is appointed by, reports to and serves under the general supervision of the Corporation's Board of Directors.

### **Grant-Making Activities**

To carry out the purposes of the LSC Act, Congress appropriated to the Corporation \$283 million for fiscal year 1997 (Pub. L. 104-208), \$274.4 million of which the Corporation is using to fund 267 legal services programs to provide legal assistance to indigent persons throughout the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and Micronesia.

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<sup>1</sup> 42 U.S.C. §§ 2996 - 2996l.

## MANAGEMENT INITIATIVES

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During the reporting period, the Corporation substantially completed the remaining grant award decisions for the 1997 calendar year. Additionally, proposals and grant renewal applications were solicited and received for calendar year 1998 grants for the delivery of legal services to eligible clients. The Corporation also began its active involvement in the new compliance monitoring system, receiving and assuring appropriate action in response to the first recommendations from the OIG and the Independent Public Accountants (“IPAs”) on findings from recipient audits. The Corporation also substantially completed its strategic planning process and continued to pursue its technology initiatives as available resources permitted.

### Competition

The 1997 competitive grants award process was substantially completed during the reporting period. Funding decisions in two service areas are pending. These applicants were placed on short funding to permit LSC to engage in a more extensive review and evaluation due to program delivery issues that have potential compliance implications. Final funding decisions for both of these service areas are expected in the near future. All other grant awards were completed for the 1997 calendar year.

In the previous reporting period, the Corporation engaged in and completed an assessment of the 1997 competitive grants process and made revisions where needed, to improve both the mechanics and the substantive content of the process. Constant evaluation of the competitive grants process is required as legal services delivery is a dynamic process in which change and innovation are constantly underway.

During this reporting period, the Corporation solicited proposals and grant renewal applications for 346 service areas for calendar year 1998 funding.<sup>2</sup> One of the new improvements to the grants process this year was an electronic filing procedure for the Notice of Intent to Compete and two other Request for Proposal (“RFP”) forms. Using this new Internet application, all but one applicant submitting full proposals in the competitive

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<sup>2</sup> It should be noted that several recipients are awarded funding to provide legal services in more than one service area; for example, a single recipient may receive both basic field and migrant farmworker funding. With its 1997 competitive grant process, the Corporation instituted a multi-year funding policy which resulted in applicants receiving one, two, or three year grants, based on certain criteria. Thus, for 1998, competitive proposals were solicited for slightly more than one-third of the service areas, the majority of which will be eligible for three year grants. Grant renewal applications were submitted for the other two-thirds of the service areas.

grants process successfully submitted these forms. Based on the positive response from the applicants and the benefits to LSC staff in having the information immediately accessible for the review process, the Corporation expects to expand the use of electronic filing to other segments of the competitive grants process during the next funding cycle. For now, the Corporation is engaged in the grants review and evaluation process and it is expected that the grant awards process will be completed during the next reporting period.

As noted in the previous reporting period, the competitive grants process captures a tremendous amount of information about legal services delivery nationwide. The Corporation continues to work directly with applicants and recipients to achieve improvements in delivery systems by: 1) setting high quality standards in the RFP; 2) using these quality standards to evaluate proposals; 3) assisting in the identification of weaknesses and/or inefficiencies through the competitive grants review evaluation process; 4) sharing information on innovations and best practices; 5) where necessary, requiring recipients to undertake specifically identified program improvement efforts within established time frames; and 6) making the decision not to fund those applicants that fail to demonstrate the capacity to provide quality legal services to eligible clients. Corporation staff continue to balance the responsibility of implementing a competitive grants process with the ongoing responsibility to provide guidance to current recipients.

## **Compliance Monitoring and Enforcement**

The Corporation is gratified that the new system for compliance monitoring found substantial compliance with Congressional restrictions. Only three findings of noncompliance with the new program requirements were identified. The Audit Information Management System (“AIMS”), developed by the OIG to track findings of grantee annual audits, provided rapid referral of findings to management, thereby assuring a quick response and resolution of those findings and recommendations referred. Management has followed up on all audit findings referred by the OIG during the reporting period, all of which have either been resolved or are being addressed by a Corrective Action Plan.

Regarding the Grantee Compliance Audits conducted by the OIG, management is currently reviewing the four recommendations which were addressed to the Corporation for its action. In addition, Corporation management will review the actions of the recipients in response to the various recommendations addressed to them. We look forward to the issuance of the final consolidated report and any additional recommendations to further strengthen our capacity to assure full compliance with Congressional restrictions by our grantees.

## **Regulatory Review**

During this period, the last of 15 regulations were published as final, bringing to a close an effort begun in 1996 to promulgate new or revised regulations to implement new restrictions and requirements in Public laws 104-134 and 104-208. Also published during this period were 2 proposed rules: one to revise the Corporation's rule on costs standards and procedures and the other to implement provisions of the Assisted Suicide Funding Restriction Act of 1997 that are applicable to LSC funds. Finally, the Corporation finalized its Accounting Guide for LSC Recipients and made technical revisions to its regulations on the Freedom of Information Act.

The Corporation anticipates a full rulemaking schedule in 1998 to update old rules or policies and to implement applicable changes in law, such as the 1996 amendments to the Freedom of Information Act and the new provisions included in the Corporation's FY 1998 appropriations.

The OIG worked closely with the Board and Corporation's staff on all these regulatory efforts.

## **Technology**

The Board remains committed to technological improvements to enhance the delivery of services by its grantees in such areas as intake systems, case management, legal work production, legal research, exchange of information, and program management. Although we are disappointed that the Corporation will not receive the \$12 million it requested in its FY 1998 Budget Request for various technology initiatives, we have made significant progress in this area during the reporting period.

The Corporation has continued to develop and implement its Grantee Information Management System ("GIMS"), which, when completed, will use current technology to enhance the ability of grantees and applicants quickly and easily to provide information required by the Corporation. In turn, the Corporation will be able to provide timely information about the grantees and their activities to Congress and the public in general. During the solicitation process for calendar year 1998 grants, all but one applicant was able to file the Notice of Intent to Compete and two other required forms through the Internet. By continuing to expand its capabilities in this area, the Corporation expects to achieve further economies and efficiencies in its competitive grant award process.

In addition, the Corporation moved into the next phase of information system development to enhance its internal accounting and human resources capabilities. This phase calls for the implementation of accounting, purchasing, inventory, and human resources

software to automate critical functions in these administrative areas. Through technology, the Corporation will continue to function effectively and economically, despite its limited staffing and financial resources.

As an adjunct to these efforts, LSC has substantially upgraded its presence on the Internet by improving its World Wide Web home page. The home page now provides useful information to all visitors in a one-stop-shopping mode, including the Corporation's mission and internal organization, a listing of its grantees, and the status of various Corporation and/or grantee activities.

Also during the reporting period, LSC co-sponsored a successful national conference entitled "Innovations & Ethical Considerations in Hotlines, Technology and Pro Se Delivery." The conference highlighted the ways that programs and other providers of legal services are making effective use of technology and new delivery systems, e.g., hotlines, to improve services to clients. More than 300 persons attended the conference, representing almost half of all LSC grantees.

## **Strategic Planning**

The Government Performance and Results Act ("GPRA," or "the Results Act") requires government agencies to develop multi-year strategic plans, and to submit annual performance plans with their budget requests, along with a report on the previous year's performance results in terms of that year's plan.

Although the Legal Services Corporation is not a federal agency, and thus not subject to GPRA, it has elected to follow a planning process based upon GPRA, to bring its budget processes into conformity with those of federal agencies and, more importantly, to promote sound management and effective realization of the Corporation's mission.

During the reporting period, LSC initiated its strategic planning process, which culminated in the development of a draft Strategic Plan for FY 1998-FY 2003, covering the activities of both the Corporation's management and administration and its Office of Inspector General. The planning process involved all LSC staff and the LSC Board of Directors, with comments solicited from grantees, clients, other entities involved in the provision of legal services, Congress and the Administration. The OIG provided helpful advice and comment to the Corporation's management as it developed the programmatic portion of the proposed Plan.

As provided for by GPRA, LSC's proposed Strategic Plan sets forth: a statement of LSC's mission; LSC's general goals for the period; how LSC plans to achieve those goals;

key external factors which could significantly affect LSC's achievement of its goals; how LSC's general goals and objectives will be translated into more specific, objectively expressed performance goals for each year in an Annual Performance Plan, and how LSC's performance will be evaluated. The OIG drafted a separate section of the proposed Plan, devoted to the special mission, goals and strategies of the Office of Inspector General.

The proposed Plan will be considered by the LSC Board at its November, 1997 meeting.

## **Other Matters**

On July 29, 1997, the Senate approved the Commerce, Justice, State, the Judiciary and Related Agencies FY 98 appropriations bill, which included a funding level of \$300 million for the Legal Services Corporation. The full House approved a \$250 million funding level on September 25, 1997. A final Commerce, Justice, State appropriations bill for FY 98 was enacted by the House and Senate on November 13, 1997, which included an appropriation of \$283 million for LSC.

The Inspector General, under the heading "Legislative and Regulatory Review," reports one instance which he characterizes as a refusal of access to requested documents. From the Corporation's perspective, the question is not the statutory right of access to Corporation documents necessary to carry out the OIG's fact-finding duties, but rather the more complex issue of whether such access to documents, which are otherwise protected by the attorney-client privilege, results in a waiver of that privilege as to all other third parties.

The instant dispute centers on three litigation reports which, according to the Inspector General's report, were requested solely as part of "the general oversight of LSC activities." The litigation reports are prepared and presented by the General Counsel at closed sessions of the meetings of the Corporation's Board of Directors. The reports summarize for the Board significant, active litigation involving the Corporation, including the parties and their counsel, the legal issues presented, the costs incurred, and the status of the proceeding. In some cases, the General Counsel reports on litigation and/or settlement positions and strategies, or other information protected by the attorney-client privilege. The Inspector General has always had available a version of the litigation report which contains all the factual information on the cases, and, indeed has direct access to this information, including the costs of the representation by outside counsel, if any, and to the complete filings made in every case, through the files in the General Counsel's office. The Board has not been made aware of any general oversight or fact-finding function of the Inspector

General that could not be fully and adequately performed based on the availability of this information.

More importantly, the Board is concerned that, by mischaracterizing the issue as one of access, the Inspector General is seeking a result that will aggravate rather than resolve the core issue of waiver of the Corporation's attorney-client privilege. The Inspector General has from time to time acknowledged that the Board's concern with the waiver of its attorney-client privilege is a legitimate one. It is the Corporation's view that disclosure of privileged information to third parties, including its own employees that have no essential role with respect to the legal advice that is being sought or given, could effectively waive the attorney-client privilege as to all other third parties. While the Inspector General indicates his disagreement with this view of the law, he has failed, despite opportunities to do so, to provide any legal authority for his assertion that no waiver occurs, assuming *arguendo* that disclosure of the information is statutorily compelled. The statutory language recommended by the Inspector General fails to address this central issue of waiver. Thus, far from eliminating the problem facing the Board and its Inspector General, the proposal could have the unintended consequence of jeopardizing the Corporation's exercise of its attorney-client privilege with further uncertainty.

Corporation management has proposed a compromise that both addresses access to privileged information by the Inspector General and the OIG staff, and fully preserves the Corporation's attorney-client privilege as to other third parties. The Inspector General has, without further comment or explanation, found this compromise to be unacceptable. Nonetheless, the Board believes that the question of waiver of the Corporation's attorney-client privilege is an issue best resolved directly by the Board and its Inspector General, and that a change in the statute is neither necessary nor appropriate at this time.

## **PROGRAM INTEGRITY**

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### **Status of Findings and Recommendations**

The Board is pleased that the Inspector General's Report for this period reflects no pattern of noncompliance among the grantees or any significant compliance findings.

As noted above, management has taken action to ensure compliance with all reported audit findings referred by the OIG from the annual recipient audits completed during the reporting period. Two of the three referred findings have been resolved, and the third is being actively addressed in the Corrective Action Plan for one grantee.

Regarding the Grantee Compliance Audits conducted by the OIG, management is currently reviewing the four recommendations contained in the final reports that are addressed to the Corporation, as well as the actions taken or planned by the grantees in response to the twelve recommendations addressed to them. We await the issuance of the OIG's remaining compliance audits and its final consolidated report for any additional recommendations.

### **Inspection of Alternative Work Arrangements**

During the reporting period, Corporation management cooperated with the OIG in its Inspection of Alternative Work Arrangements, which focused on implementation of the Corporation's alternative work schedule policies for the period March 8, 1997 to June 30, 1997. The draft report was received on October 23, 1997, and management promptly responded. The draft report recommendations were generally consistent with those developed by management through its own on-going internal review of personnel procedures. Implementation of the recommendations is currently under way and should be completed prior to the issuance of the final report.

### **Corporation's Annual Financial Statement Audit**

Corporation management has also been cooperating with the OIG in its annual financial statement audit which began during this reporting period. The Corporation looks forward to receiving and reporting on the Inspector General's final report during the next period.

### **Investigations**

Corporation management continues to work with the landlord's office of Tenant Services and the Federal Protective Services Agency to complete work on a new Safety Awareness Program. The recommendation regarding the use of Corporation ID badges will be addressed in that report.

**TABLE 1**

**Management Report on  
Office of Inspector General Audits of Grantees  
Issued With Questioned Costs  
For the Six-Month Period Ending September 30, 1997**

	Number of Reports	Questioned Costs	Unsupported Costs
A. Audit Reports for grantees on which no management decision had been made by the commencement of the reporting period.	0	\$ 0	\$ 0
B. Audit Reports issued during the reporting period.	0	\$ 0	\$ 0
Subtotals (A + B)	0	\$ 0	\$ 0
MINUS:			
C. Audit Reports for which a management decision was made during the reporting period:.	0	\$ 0	\$ 0
(i) dollar value of recommendations that were agreed to by management	0	\$ 0	\$ 0
(ii) dollar value of recommendations that were not agreed to by management	0	\$ 0	\$ 0
D. Audit Reports for which no management decision had been made by the end of the reporting period.	0	\$ 0	\$ 0
Audit Reports for which no management decision had been made within six months of issuance.	0	\$ 0	\$ 0

**TABLE 2****Management Report on Audit Reports Issued During  
the Six-Month Period Ending September 30, 1997  
With Recommendations That Funds Be Put to Better Use**

		Number of Reports	Dollar Value
A.	Audit Reports for which no management decision has been made by the commencement of the reporting period.	0	\$ 0
B.	Audit Reports issued during the reporting period.	0	\$ 0
	Subtotals (A + B)	0	\$ 0
MINUS:			
C.	Audit Reports for which a management decision was made during the reporting period:	0	\$ 0
	(i) dollar value of recommendations that were agreed to by management	0	\$ 0
	(ii) dollar value of recommendations that were not agreed to by management	0	\$ 0
D.	Audit Reports for which no management decision had been made by the end of the reporting period.	0	\$ 0
	Audit Reports for which no management decision had been made within six months of issuance.	0	\$ 0